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DE RUEHC #6863 2830555
ZNR UUUUU ZZH
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FM SECSTATE WASHDC
TO RUEHLI/AMEMBASSY LISBON IMMEDIATE 6452-6453
RUCNDT/USMISSION USUN NEW YORK IMMEDIATE 3397-3398
INFO RUEHGV/USMISSION GENEVA IMMEDIATE 4145

UNCLAS STATE 106863

SENSITIVE

C O R R E C T E D C O P Y (SENSITIVE CAPTION ADDED)

SIPDIS

E.O. 12958: N/A

TAGS: [PHUM](#)

SUBJECT: ACTION REQUEST: UNGA - OPTIONAL PROTOCOL TO THE
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL
RIGHTS

[1](#)1. (U) This is an action request. Embassy is requested to
approach host government at the appropriate level to share
U.S. concerns about the Optional Protocol to the

International Covenant on the Economic, Social and Cultural
Rights (OPESCR), and to request a small change in the
proposed UN General Assembly (UNGA) resolution language.
USUN is requested to follow-up in New York.

OBJECTIVES FOR LISBON

[1](#)2. (SBU) Drawing on background (paras 3 - 6), as appropriate,
Embassy is requested to pursue the following objectives:

- Express U.S. concerns on the substance and negotiations
process of the OPESCR;
- Share U.S. understanding that multiple countries were
dissatisfied with the negotiation process and outcome; and
- Seek Portugal's agreement to change the word "welcoming"
to "noting" in the preambular paragraph of the proposed draft
resolution in the UNGA.

If needed:

- If this change is not accepted, the U.S. may call for a
vote on the resolution.
- Note the U.S. is not proposing to re-open the text of the
optional protocol itself.

OBJECTIVES FOR USUN

[1](#)3. (SBU) Mission is requested to follow up with the
Portuguese delegation in New York keeping in mind the
objectives listed in para 2, and to seek support from other
like-minded countries (list provided in para 6).

BACKGROUND

[1](#)4. (U) In its resolution 1/3, the Human Rights Council
created the Working Group "to elaborate an optional protocol
to the International Covenant on Economic, Social and
Cultural Rights." Catarina de Albuquerque (Portugal) chaired
the Working Group and its negotiations on the elaboration of
an optional protocol. At the fifth negotiating session in
April 2008, a draft protocol was pushed through despite many
delegations' stated reservations on the draft language. The
protocol was subsequently adopted by the Human Rights Council

at its eighth session without a vote.

¶5. (U) The U.S. is not a party to the International Covenant on Economic Social and Cultural Rights and did not support the creation of the optional protocol. The protocol's purpose, according to its advocates, is to empower the Committee on Economic, Social and Cultural Rights to adjudicate complaints made by individuals. This complaints procedure is roughly analogous to the one created by the first Optional Protocol to the International Covenant on Civil and Political Rights (OP1-ICCPR). The proponents of an Optional Protocol have long argued that the absence of a complaints procedure for ESC rights relegates those rights to a kind of second-class status. The well-known position of the U.S. is that economic, social and cultural rights (unlike civil and political rights) are to be "progressively realized" and that the nature of economic, social and cultural rights in a legal sense is fundamentally different than civil and political rights. Despite our opposition to the creation of an optional protocol, and in a spirit of cooperation, the U.S. participated in Working Group sessions and constructively contributed to the drafting process.

¶6. (SBU) In the fifth Working Group session, after much debate and a clear indication that there was no agreement on major provisions of the text, the Chair produced a final text on which there was no opportunity for revision. Despite the clear flaws in process that led to the last-minute preparation of a Chair's text, no delegation objected to the draft being forwarded to the Human Rights Council for action in its eighth session. The Human Rights Council adopted the resolution without a vote, and recommended that the General Assembly adopt the following resolution:

The General Assembly,

Welcoming the adoption by the Human Rights Council, through its resolution (number to be inserted here), of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,

¶1. Adopts and opens for signature, ratification and accession the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the text of which is annexed to the present resolution;

¶2. Recommends that the Optional Protocol be opened for signature at a signing ceremony in Geneva in March 2009 and requests the Secretary-General and the United Nations High Commissioner for Human Rights to provide the necessary assistance.

End Resolution text.

¶7. (SBU) A proposed compromise could be to substitute "Noting" for the current "Welcoming" in the preambular paragraph. Several countries share U.S. skepticism about the protocol and may be willing to support U.S. efforts to neutralize the resolution language. These include: UK, Canada, Australia, New Zealand, Poland, Denmark, the Netherlands, Norway, and possibly Turkey. Initial outreach to these countries in Capital or in Geneva indicates that none are willing to commit at this time to voting against the resolution, but do have significant concerns with the protocol itself. A single-word change by Portugal will likely alleviate the concern of all those countries as well.

¶8. (U) Department appreciates Lisbon's assistance. Point of contact is Amy Ostermeier in IO/RHS.
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